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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 132 52003 Office: VERMONT SERVICE CENTER Date: **MAR 11 2004**

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

For Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a medical research institute. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a cancer research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On the Form I-290B Notice of Appeal, filed on July 11, 2003, counsel indicated that a brief would be forthcoming within thirty days. To date, eight months later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The statement on the appeal form reads, in its entirety, "[w]e are challenging several incorrect statements made by BCIS in its explanation for denying the I-140 petition (e.g., number of coinventors on patent is incorrect). We also wish to submit additional evidence not available at the time of filing of the petition."

The above statement on appeal is nearly devoid of substance. We must consider, however, a similar lack of substance in the director's denial notice. If the director issued an unacceptably vague or general denial notice, then there would be few, if any, valid factual bases for petitioner to contest on appeal.

The only specific error cited on appeal refers to the number of coinventors named on a patent application. The director had stated "[t]here appear to be at least 14 coinventors" on the application, a number which counsel contests on appeal. It appears, from review of the patent application, that the director mistook a list of twelve "registered practitioners," acting as petitioner's agents to register the patent application, for a list of coinventors.

The mere filing of a patent application in no way affords international recognition to the named coinventors. Therefore, the number of coinventors named on the application is not a significant, material issue or a valid basis for denial of the petition.

Citizenship and Immigration Services regulations at 8 C.F.R. § 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by, among other things, evidence that the beneficiary is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

> (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
>
> (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
>
> (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The above guidelines appear in the director's decision, in the context of an overview of the controlling regulations. Nevertheless, the director's decision contains no discussion as to how petitioner's evidence is deficient with regard to the above regulations. Similarly, an earlier request for evidence contained no reference to the above regulatory standards.

As it stands, the director's decision consists mainly of a partial description of petitioner's evidence, followed by the conclusory statement that the evidence is not sufficient to establish eligibility. With no discussion of specific shortcomings in petitioner's evidence, the decision failed to afford petitioner the opportunity to mount any specific rebuttal on appeal. If the petitioner's appeal is deficient, then this is largely because it stems from an equally deficient denial notice.

Therefore, this matter will be remanded for the issuance of a new decision, which, if a denial, explains specific and relevant deficiencies in the petitioner's evidence. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.